SINNATHURAI SUBRAMANIAM A

v.

PP

COURT OF APPEAL, PUTRAJAYA B
HASAN LAH JCA
ABDUL MALIK ISHAK JCA
AHMAD MAAROP JCA
[CRIMINAL APPEAL NO: J-05-315-2009]
25 FEBRUARY 2011 C

CRIMINAL LAW: *Penal Code - Section 304(a) - Culpable homicide not amounting to murder - Conviction and sentence - Appeal against - Mitigating factors - Consideration of - Public interest - Deterrent sentence - Whether sufficiently long imprisonment term imposed to reflect gravity of offence - Whether sentence passed manifestly excessive or harsh* D

CRIMINAL PROCEDURE: *Sentence - Appeal against - Mitigating factors - Consideration of - Public interest - Deterrent sentence - Whether sufficiently long imprisonment term imposed to reflect gravity of offence - Whether sentence manifestly excessive or harsh - Penal Code, s. 304(a)* E

The appellant and his wife Kristina Moses ('Kristina') were accused of murdering Khosla Devi Batumalai ('Khosla') and Keerthisa Sri Suega Paran ('Keerthisa') by setting ablaze a car in which the two deceased persons had been locked in and perished. F Subsequently, the public prosecutor charged them with an alternative charge accusing them of culpable homicide not amounting to murder of Khosla and Keerthisa in furtherance of their common intention, an offence punishable under s. 304(a) of the Penal Code read with s. 34 of the same. Sinnathurai and G Kristina pleaded guilty to the same and were convicted. Each of them was sentenced to 24 years imprisonment. Dissatisfied with the sentence, Sinnathurai preferred an appeal to this court. The appellant contended that the learned judge had failed to consider the mitigating factors pleaded on behalf of Sinnathurai. It was H submitted that Sinnathurai had pleaded guilty as soon as the amended charge was read to him and therefore he should be given a discount of one third or one quarter of the sentence. The issue that arose was whether the sentence passed by the court was wrong in principle. I

A **Held (dismissing the appeal; affirming sentence imposed by High Court)**
Per Ahmad Maarop JCA (delivering the judgment of the court):

B **(1)** Public interest should be the first and foremost consideration in the assessment of sentence. The offence was serious and committed in a very cruel manner. In light of this, Sinnathurai's plea of guilty did not warrant the giving of a 'discount on the sentence to be meted out' (*Yit Kean Hong v. PP*). Public interest demanded that a deterrent sentence be C imposed to deter not only Sinnathurai but other would be offenders. No appealable error in the judgment could be detected. (para 8)

D **(2)** The facts reveal a terribly cruel and grave nature of the offence committed by Sinnathurai and Kristina. At the material date and time, they had pounced upon Khosla, dragged her into a room and then tied her hands and legs before dumping her into the boot of her car. Keerthisa was taken into the car and made to sit with Kristina. The car was then driven to the E scene, where Sinnathurai and Kristina alighted from it leaving Khosla locked in the boot of the car and Keerthisa locked in the car. Then Sinnathurai had torched the car and had deliberately burnt them alive. The pain, torture and terror as well as utter helplessness experienced by Khosla and her little F daughter as the raging fire consumed the car would be beyond description. Such revolting facts which depict the very inhuman and savage nature of Sinnathurai's act would surely outrage the feeling of right thinking and sane members of the community. Public interest thus demands that a sufficiently G long imprisonment term be imposed to truly reflect the gravity of the offence and to demonstrate society's abhorrence of this particular type of offence. The sentence passed must also serve as a stark and plain warning that the court would be in no mood to tolerate such an offence and very severe penalty H awaits any person who dare commit such a crime. (para 8)

(3) The sentenced passed by the learned judge was not in any way manifestly excessive or harsh. (para 9)

I

Per Abdul Malik Ishak JCA (delivering separate concurring judgment):

(1) When a judge imposes a sentence he is making a statement whether the offence is serious or trivial. It is in these contexts that sentencing judges must be very cautious and must weigh in a balance the gravity of the offence with the proposed sentence. The sentence imposed must always reflect public interest after taking into account the mitigation advanced by the accused. (para 35)

(2) The type of offence committed by Sinnathurai could not attract leniency. The offence was so gross and barbaric. This was an apt case for crime control and public protection. Deterrence is the answer. The right message must be sent to all prospective offenders. It is just unthinkable to give a light sentence. A severe sentence is called for. (para 36)

(3) The sentence of 24 years imprisonment was in order for this kind of offence. Under the circumstances, the sentence imposed by the learned High Court judge was not manifestly excessive. The factual matrix did not merit a discount to be given to the appellant. (para 38)

Bahasa Malaysia *Translation Of Headnotes*

Perayu dan isterinya Kristina Moses ('Kristina') dituduh membunuh Khosla Devi Batumalai ('Khosla') dan Keerthisa Sri Suega Paran ('Keerthisa') dengan membakar sebuah kereta di mana simati-simati telah dikunci di dalamnya dan terbakar hingga mati. Kemudiannya, pihak pendakwaraya telah membuat pertuduhan alternatif terhadap mereka menuduh mereka melakukan homisid salah yang tidak menjumlah kepada pembunuhan Khosla dan Keerthisa dengan melanjutkan niat bersama, satu kesalahan yang boleh dihukum di bawah s. 304(a) Kanun Keseksaan dibaca bersama dengan s. 34. Sinnathurai dan Kristina telah mengaku salah kepada pertuduhan tersebut dan disabit. Masing-masing telah dijatuhkan dengan hukuman 24 tahun di penjara. Tidak puas hati dengan hukuman tersebut, Sinnathurai membuat rayuan kepada mahkamah ini. Perayu berhujah bahawa hakim bicara telah gagal mempertimbangkan faktor-faktor mitigasi yang diplidkan bagi pihak Sinnathurai. Ia dihujahkan bahawa Sinnathurai telah mengaku salah sebaik sahaja pertuduhan alternatif dibacakan kepadanya dan

A oleh itu beliau harus diberi diskaun hukuman satu pertiga atau satu suku daripada hukuman yang diberi. Isu yang timbul adalah sama ada hukuman yang dijatuhkan oleh mahkamah adalah salah dari segi prinsip.

B **Diputuskan (menolak rayuan; mengesahkan hukuman yang dijatuhkan oleh Mahkamah Tinggi)**
Oleh Ahmad Maarop HMR (menyampaikan penghakiman mahkamah):

C **(1)** Kepentingan awam harus menjadi pertimbangan yang pertama dan terpenting dalam penilaian hukuman. Kesalahan adalah serius dan dilakukan dengan cara yang sangat kejam. Oleh sebab itu, pengakuan salah Sinnathurai tidak memerlukan pemberian 'diskaun hukuman yang diberi' (*Yit Kean Hong v. PP*). Kepentingan awam menuntut bahawa satu hukuman
D pencegahan dikenakan untuk menghalang bukan sahaja Sinnathurai tetapi bakal pesalah-pesalah. Tiada kesilapan yang boleh dirayu di dalam penghakiman dikesan.

(2) Fakta-fakta menunjukkan sifat yang serius dan betul-betul
E kejam Sinnathurai dan Kristina. Pada tarikh dan masa yang material, perayu dan isterinya telah menerkam Khosla, mengheretnya ke satu bilik dan mengikat tangan dan kakinya sebelum membuangnya ke dalam but keretanya. Keerthisa diambil masuk ke dalam kereta dan disuruh duduk dengan
F Kristina. Kereta itu kemudiannya dipandu ke tempat kejadian, di mana Sinnathurai dan Kristina telah turun dari kereta dan meninggalkan Khosla di dalam but kereta dan Keerthisa di dalam kereta. Sinnathurai kemudiannya telah membakar kereta itu dan dengan sengaja telah membakar mereka hidup-hidup.
G Kesakitan, penganiayaan dan keganasan serta ketidakupayaan yang dialami Khosla dan anak kecilnya semasa keretanya dijilat api tidak boleh diperkatakan. Fakta-fakta menjijikkan yang menggambarkan sifat ganas semulajadi tindakan Sinnathurai tentu sekali akan membuat ahli-ahli komuniti yang waras naik
H marah. Kepentingan awam oleh itu menuntut hukuman penjara yang panjang dikenakan untuk benar-benar mencerminkan betapa seriusnya kesalahan itu dan menunjukkan kebencian masyarakat terhadap kesalahan seperti ini. Hukuman yang dijatuhkan mesti juga memberi amaran yang benar dan jelas
I

bahawa mahkamah tidak akan menerima kesalahan seperti ini dan penalti yang sungguh teruk menunggu sesiapa yang sanggup melakukan jenayah sebegitu.

(3) Hukuman yang dijatuhkan oleh hakim bicara tidak keterlaluan atau keras.

Oleh Abdul Malik Ishak HMR (menyampaikan penghakiman menyetujui berasingan):

(1) Apabila hakim menjatuhkan hukuman beliau membuat pernyataan sama ada kesalahan adalah serius atau remeh. Ia adalah dari konteks ini yang hakim-hakim mesti berhati-hati dan mestilah mempertimbangkan dalam satu keseimbangan graviti kesalahan itu dengan hukuman yang dicadangkan. Hukuman yang dijatuhkan kena sentiasa mencerminkan kepentingan awam selepas mengambil dalam pertimbangan mitigasi yang dibangkitkan oleh tertuduh.

(2) Jenis kesalahan yang dilakukan oleh Sinnathurai tidak boleh menarik hukuman yang ringan. Kesalahan tersebut adalah sungguh dahsyat dan kejam. Ini adalah kes yang sesuai untuk mengawal jenayah dan melindungi awam. Pencegahan adalah jawapannya. Pesanan yang betul mestilah dihantar kepada bakal pesalah-pesalah. Ia memang tidak masuk akal untuk memberi hukuman yang ringan. Hukuman berat adalah diperlukan.

(3) Hukuman penjara 24 tahun adalah sesuai untuk kesalahan seperti ini. Dalam keadaan ini, hukuman yang dijatuhkan oleh Mahkamah Tinggi tidak keterlaluan. Fakta-fakta matriks tidak mewajarkan diskaun hukuman untuk diberi kepada perayu.

Case(s) referred to:

Abu Bakar Alif v. R [1952] 1 LNS 4 HC ***(refd)***
Bhandulananda Jayatilake v. PP [1981] 1 LNS 139 FC ***(refd)***
James Henry Sargeant [1974] 60 Cr App R 74 ***(refd)***
Kenneth John Ball [1951] 35 Cr App R 164 ***(refd)***
Lee Chow Meng v. PP [1975] 1 LNS 80 HC ***(refd)***
Loh Hock Seng & Anor v. PP [1979] 1 LNS 48 FC ***(refd)***
Low Oi Lin v. Rex [1949] 15 MLJ 210 ***(refd)***
Mohd Abdullah Ang Swee Kang v. PP [1987] 2 CLJ 405; [1987] CLJ (Rep) 209 SC ***(refd)***
PP v. Loo Choon Fatt [1976] 1 LNS 102 HC ***(refd)***

A *PP v. Ravindran & Ors [1992] 1 LNS 47 HC* ***(refd)***
PP v. Teh Ah Cheng [1976] 1 LNS 116 HC ***(refd)***
R v. Ball Cri App R 164 ***(refd)***
R v. de Haan [1967] 3 All ER 618 ***(refd)***
R v. Neville (Richard) [2002] EWCA Crim 2522 ***(refd)***
B *R v. Williams [1974] Crim LR 558* ***(refd)***
Re James Henry Sergeant [1974] 60 Cr App R 74 ***(refd)***
Sau Soo Kim v. PP [1975] 1 LNS 158 FC ***(refd)***
Soosainathan v. PP [2001] 6 CLJ 44 HC ***(refd)***
Yit Kean Hong v. PP [2005] 4 CLJ 592 CA ***(refd)***

C **Legislation referred to:**
Courts of Judicature Act 1964, s. 62(2)
Penal Code, ss. 34, 302, 304(a)

For the appellant - Gobind Singh Deo (S Prakash with him); M/s Gobind Singh Deo & Co
D *For the respondent - Samihah Rhazali DPP*

[Appeal from High Court, Muar; Criminal Trial No: 45-6-2008 & 45-7-2008]

Reported by Suhainah Wahiduddin

E

JUDGMENT

Ahmad Maarop JCA:

F **The Charge**

[1] The appeal before the court concerns two more senseless homicides. In this tragic case a mother and her little daughter perished in a car which was set ablaze by the appellant.

G **[2]** Originally, the appellant - Sinnathurai a/l Subramaniam ("Sinnathurai") and his wife Kristina a/p Moses ("Kristina") were jointly charged in the High Court with one charge accusing them of an offence of murder punishable under s. 302 of the Penal Code read with s. 34 of the same Code. In the said charge they
H were accused of murdering Khosla Devi a/p Batumalai ("Khosla") and Keerthisa a/p Sri Suega Paran ("Keerthisa") on 2 November 2007 at about 11.15pm at Jalan Kebun Sayur, bt 6, Jalan Mersing, Johor. After eight witnesses testified for the prosecution, the public prosecutor tendered an alternative charge accusing them

I

of culpable homicide not amounting to murder of Khosla and Keerthisa in furtherance of their common intention, at the time and place which were the same as stated in the original charge, an offence punishable under s. 304(a) of the Penal Code read with s. 34 of the same Code. On the alternative charge being read and understood by each of them, Sinnathurai and Kristina pleaded guilty to the same. They were convicted and each of them was sentenced to 24 years imprisonment. Being dissatisfied with the sentence, Sinnathurai preferred an appeal to this court. Kristina did not appeal against the aforesaid sentence.

Brief Facts Of The Case

[3] On 2 November 2007 (the date of the offence) at about 4.30pm, Kristina telephoned Khosla informing the latter that she wanted to buy cosmetics which were being sold by the latter. Responding to the telephone call, at about 5.30pm, accompanied by her daughter (who was then about six years old), Khosla left her mother's house in the car no. JHD 9225 to meet Kristina. The car belonged to Khosla. Khosla and Keerthisa arrived at Kristina's house at about 7.30pm. At that time Sinnathurai was also present in the house. About an hour later while they were still in the house, all of a sudden, Sinnathurai pounced upon Khosla and dragged her into a room and tied her hands. Kristina tied Khosla's legs. Then, Sinnathurai dragged Khosla and dumped her in the boot of Khosla's car. Meanwhile, Keerthisa was taken into the car and made to sit with Kristina. The car was then driven to a vegetable farm at Batu 6, Jalan Mersing, Kluang (the scene). There, Sinnathurai and Kristina alighted from the car leaving Khosla locked in the boot of the car and Keerthisa locked in the car. Sinnathurai then torched the car with Khosla and Keerthisa still locked in it. At that time Khosla and Keerthisa were still alive.

[4] Later, acting on a tip off received at about 11pm from a member of the public about the burning car, the Fire Service Department people rushed to the scene. Unfortunately, by the time the fire was eventually put out, Khosla and her daughter were dead, and all that were left of them were the charred remains of their bodies - Khosla's body in the boot of the car and Keerthisa's body in the car. The forensic pathologist who performed the autopsies on Khosla and Keerthisa, certified that the cause of death of each of them was soot inhalation.

A **Decision**

[5] The question for our decision is whether the sentence passed by the court below was wrong in principle? (See *Re James Henry Sergeant* [1974] 60 Cr App R 74, *R v. Ball* Cri App R 164, *Abu*
B *Bakar Alif v. R* [1952] 1 LNS 4). Can we say that the imposition of the sentence in question by the learned judge in the court below must have involved an error of law of some description (see *Bhandulananda Jayatilake v. PP* [1981] 1 LNS 139; [1982] 1 MLJ 83 at p. 84 FC]. For reasons which I will set out in a moment, I
C would answer the questions in the negative.

[6] Before us learned counsel for Sinnathurai contended that the learned judge in the court below had failed to consider the mitigating factors pleaded on behalf of the Sinnathurai. It was
D submitted that Sinnathurai had pleaded guilty as soon as the amended charge was read to him and therefore he should be given a discount of one third or one quarter of the sentence. *Mohd Abdullah Ang Swee Kang v. PP* [1987] 2 CLJ 405; [1987] CLJ (Rep) 209, *PP v. Ravindran & Ors* [1992] 1 LNS 47, *Soosainathan*
E *v. PP* [2001] 6 CLJ 44 and *Sau Soo Kim v. PP* [1975] 1 LNS 158 were cited in support of that submission. It was also submitted that the learned judge in the court below failed to consider Sinnathurai's age and that he was a first offender. With respect I am unable to agree. At the beginning of his deliberation
F on the sentence to be meted out, the learned judge directed himself on the factors which must be considered:

> Di dalam melaksanakan budibicara Kehakiman untuk mengenakan hukuman yang sewajarnya saya telah menimbangkan faktor-faktor yang perlu diambilkira seperti yang dijelaskan oleh Mahkamah
G Agong di dalam kes *Mohd Abdullah Ang Swee Keng v. PP* [1987] 2 CLJ 405 iaitu:
>
> > In assessing the length of custodial sentence, the court must look at the overall picture in perspective by considering, firstly, the gravity of the offence committed;
H secondly, the facts in the commission of the offence; thirdly, the presence or absence of mitigation factors, and fourthly, the sentences that have been imposed in the past for similar offences to determine the trend of sentencing policy, if any.

I

[7] In other words, the learned judge was very well aware that he had to consider the mitigating factors pleaded by Sinnathurai. He duly considered all of them including Sinnathurai's plea of guilty and the related question of discount. This is what the learned judge said in his grounds of judgment:

> OKT dalam rayuannya menyatakan telah insaf dan menyesali perbuatannya yang beliau sifatkan sebagai satu kesilapan; merupakan pesalah pertama; berumur 24 tahun ketika melakukan kesalahan; telah berkahwin dengan OKT2 dengan mempunyai seorang anak; berlaku pertengkaran fizikal dengan simati pertama malam itu dan simati pertama telah pengsan; tidak tahu simati pertama masih hidup atau telah meninggal dunia; tidak tahu apa harus dibuat; melakukan kesilapan besar lagi bodoh dengan membakar kedua-dua simati; datang dari keluarga yang baik-baik dan ayahnya seorang penghidap sakit jantung.

[8] He then considered the public interest which should actually be the first and foremost consideration in the assessment of sentence. He considered the facts and circumstances surrounding the commission of the offence and concluded that the offence was serious and committed in a very cruel manner. In the light of all this he held that Sinnathurai's plea of guilty did not warrant the giving of a "discount" on the sentence to be meted out. In support, he relied on the decision of this court in *Yit Kean Hong v. PP* [2005] 4 CLJ 592. He held that public interest outweighed the factors in mitigation pleaded by Sinnathurai. The learned judge also took into account the prevalence of offences of homicide which he observed was given wide media coverage. Again I do not think he had fallen into error. He was entitled to take judicial notice of the prevalence of such offences (see *Lee Chow Meng v. PP* [1975] 1 LNS 80). Having taken into account all the aforesaid considerations, the learned judge opined that public interest demanded that a deterrent sentence be imposed to deter not only Sinnathurai but other would be offenders. I detect no appealable error in the judgement of the learned judge. The facts reveal a terribly cruel and grave nature of the offence committed by Sinnathurai and Kristina. To reiterate, at the material date and time they had pounced upon Khosla, dragged her into a room and then tied her hands and legs before dumping her into the boot of her car. Keerthisa was taken into the car and made to sit with Kristina. The car was then driven to the scene, where Sinnathurai

A and Kristina alighted from it leaving Khosla locked in the boot of the car and Keerthisa locked in the car. Then Sinnathurai torched the car. In other words, Sinnathurai had deliberately burnt them alive. The pain, torture and terror as well as utter helplessness experienced by Khosla and her little daughter as the raging fire
B consumed the car would be beyond description. Such revolting facts which depict the very inhuman and savage nature of Sinnathurai's act would surely outrage the feeling of right thinking and sane members of the community. In such a case public interest demands that a sufficiently long imprisonment term be
C imposed to truly reflect the gravity of the offence and to demonstrate society's abhorrence of this particular type of offence. The sentence passed must also serve as a stark and plain warning that the court would be in no mood to tolerate such an offence and very severe penalty awaits any person who dare commit such
D a crime.

[9] On the date the offence was committed by Sinnathurai, it was punishable with an imprisonment for a term which may extend to 30 years and the offender shall also be liable to fine. Before
E being amended by Act A1210 which came into force on 6 March 2007, the section under which Sinnathurai was punished carried the maximum sentence of 20 years. For the deaths of Khosla and Keerthisa, Sinnathurai and Kristina could have been charged with two separate offences of culpable homicide not amounting to
F murder. However, the public prosecutor in his wisdom had preferred only one charge for the two deaths. That he was legally entitled to do so in the exercise his discretion is beyond doubt. However, the effect is that for the double homicides not amounting to murder, Sinnathurai was sentenced to 24 years.
G Although Sinnathurai and Kristina faced only one charge and must be adjudged as such, it could not be ignored that they had actually caused two deaths. Considered in this perspective, a longer term of imprisonment could also have been passed. But then, it has been said again and again that an appellate court will
H not normally interfere with sentences meted out by a trial judge, and that the possibility or even the probability, that another court would have imposed a different sentence is not sufficient *per se*, to warrant an appellate interference. In the end what is important is

I

that I am satisfied that the sentence passed by the learned judge in the court below was not in any way manifestly excessive or harsh.

[10] In the result, the appeal is dismissed. The sentence passed by the High Court is affirmed.

[11] My learned brother Hasan Lah JCA has read this judgment in draft and agreed with it as the judgment of the court. My learned brother Abdul Malik Ishak JCA also has read this judgment in draft and agreed with it, and in addition has written a separate judgment in support.

Abdul Malik Ishak JCA:

Introduction

[12] I have obtained the kind permission of the Right Honourable President of the Court of Appeal pursuant to the proviso to sub-s. (2) of s. 62 of the Courts of Judicature Act 1964 to write this separate judgment.

[13] I have read the well written judgment of my learned brother Ahmad Haji Maarop, JCA and I gratefully adopt the facts narrated by him and the law applied by him in this separate judgment. I venture to dwell on the sentencing principles in general terms.

Sentencing

[14] The purpose of the penal system is to reduce crime and at the same time to make offenders realise that they have to obey the criminal law. It cannot be denied that punishment under the Penal Code is justified on account of two objectives. Firstly, the reduction of crime. Secondly, the promotion of respect for the criminal law.

[15] What Professor Nigel Walker said in "sentencing in a rational society" that, "no society can afford a policeman at everyone's elbow" must surely apply to every penal system. For criminal law to be implemented successfully, the practice of punishing offenders and the type of punishment to be meted out to offenders must be accepted by society.

[16] I am of the considered view that the justification of the practice of punishment is to reduce crime. And this is manifested by deterring potential offenders or by deterring the individual offender from committing the same crime again. In reality, if punishment is to deter it may only be effective by giving offenders their just deserts. That is the only way to deter offenders and would be offenders.

[17] There is no statute that carries a general statement of the aims which sentencers should seek and strive to achieve. But judges have developed the law on sentencing with a sense of purpose. One such judge is Lawton LJ who decided the case of *James Henry Sargeant* [1974] 60 Cr App R 74. In that case the appellant was employed as a doorman at a discotheque. He observed that a customer was making a nuisance of himself. The appellant approached the customer and butted him. A general affray took place. Although the appellant received a painful blow in return, he did not take any further action. The appellant appealed against the sentence of two years imprisonment, and Lawton LJ delivering the judgment of the Court of Appeal had this to say (see pp. 77 to 78 of the report):

> What ought the proper penalty to be? We have thought it necessary not only to analyse the facts, but to apply to those facts the classical principles of sentencing. Those classical principles are summed up in four words: retribution, deterrence, prevention and rehabilitation. Any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing.
>
> I will start with retribution. The Old Testament concept of an eye for an eye and tooth for tooth no longer plays any part in our criminal law. There is, however, another aspect of retribution which is frequently overlooked: it is that society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentences they pass. The courts do not have to reflect public opinion. On the other hand courts must not disregard it. Perhaps the main duty of the court is to lead public opinion. Anyone who surveys the criminal scene at the present time must be alive to the appalling problem of violence. Society, we are satisfied, expects the courts to deal with violence. The weapons which the courts have at their disposal for doing so are few. We are

satisfied that in most cases fines are not sufficient punishment for senseless violence. The time has come, in the opinion of this Court, when those who indulge in the kind of violence with which we are concerned in this case must expect custodial sentences.

But we are also satisfied that, although society expects the courts to impose punishment for violence which really hurts, it does not expect the courts to go on hurting for a long time, which is what this sentence is likely to do. We agree with the trial judge that the kind of violence which occurred in this case called for a custodial sentence. This young man has had a custodial sentence. Despite his good character, despite the excellent background from which he comes, very deservedly he has had the humiliation of hearing prison gates closing behind him. We take the view that for men of good character the very fact that prison gates have closed is the main punishment. It does not necessarily follow that they should remain closed for a long time.

I turn now to the element of deterrence, because it seems to us the trial judge probably passed this sentence as a deterrent one. There are two aspects of deterrence: deterrence of the offender and deterrence of likely offenders. Experience has shown over the years that deterrence of the offender is not a very useful approach, because those who have their wits about them usually find the closing of prison gates an experience which they do not want again. If they do not learn that lesson, there is likely to be a high degree of recidivism anyway. So far as deterrence of others is concerned, it is the experience of the courts that deterrent sentences are of little value in respect of offences which are committed on the spur of the moment, either in hot blood or in drink or both. Deterrent sentences may very well be of considerable value where crime is premeditated. Burglars, robbers and users of firearms and weapons may very well be put off by deterrent sentences. We think it unlikely that deterrence would be of any value in this case.

We come now to the element of prevention. Unfortunately it is one of the facts of life that there are some offenders for whom neither deterrence nor rehabilitation works. They will go on committing crimes as long as they are able to do so. In those cases the only protection which the public has is that such persons should be locked up for a long period. This case does not call for a preventive sentence.

A Finally, there is the principle of rehabilitation. Some 20 to 25 years ago there was a view abroad, held by many people in executive authority, that short sentences were of little value, because there was not enough time to give in prison the benefit of training. That view is no longer held as firmly as it was. This young man does not want prison training. It is not going to do him any good. It is his memory of the clanging of prison gates which is likely to keep him from crime in the future.

[18] The principles of sentencing enunciated by Lawton LJ in *James Henry Sargeant (supra)* are certainly apt. What Sinnathurai and his wife Kristina did to the two victims are certainly despicable. The 24 years imprisonment meted out by the learned High Court judge would surely stir the "memory" of Sinnathurai to "the clanging of prison gates" and it is hoped that that will "likely to keep him from crime in the future" (to borrow the expressions of Lawton LJ in *James Henry Sargeant (supra)*).

[19] The central focus of public interest in sentencing is merely stating the obvious. It is that every sentence must be in the public interest. It signals the hardening of the sentencing policy. It promotes consistency and undue disparity in sentencing. It allows the court to apply the desert-based model with the public interest element as a major distinctive feature.

[20] There must be clear guidance in the sentencing principles. With clear guidance there will not be disorganisation and there will no longer be scant respect for consistency and accountability.

[21] Essentially, sentencing is about crime control and public protection. These can readily be achieved through deterrence, prevention and rehabilitation. Retribution is also important and it does play a role.

[22] It must be borne in mind that when the sentencer exercises his discretion in sentencing he is assumed to be very familiar with the social conditions wherein the sentence must operate. Bearing that in mind, the appellate court should be slow to interfere and should accord him a large degree of deference.

[23] It is germane to mention that no two cases are the same and according to Taylor J in *Low Oi Lin v. Rex* [1949] 15 MLJ 210, at p. 211 that, "It is impossible to lay down rules for fixing sentences". That was on 10 June 1949. Now, the emphasis is on

crime control and high sentences must be imposed. We must make sure that our country is crime free and safe from such criminals and to those would be criminals who are bent on committing the same offence must be told in no uncertain terms that they will be dealt with severely by this court. Our citizens must be protected from hardened criminals.

[24] Prevention and deterrence are of prime considerations. The emphasis is to protect the public in every sense of the word. Retribution refers to the application of the just deserts principle. It emphasises on personal culpability which must correlate to the seriousness of the offence. The seriousness of the offence should be rigorously observed and must commensurate with the punishment imposed.

[25] The public interest element is a permanent feature in our sentencing policy. Hilbery J's remarks in *Kenneth John Ball* [1951] 35 Cr App R 164 have frequently been cited by our judges. And what Hashim Yeop A Sani J (later the Chief Judge of Malaya) said in *PP v. Loo Choon Fatt* [1976] 1 LNS 102; [1976] 2 MLJ 256 have had an influence over subsequent cases decided by our judges. At p. 258, this was what his Lordship said:

> The correct approach is to strike a balance, as far as possible, between the interests of the public and the interests of the accused.

[26] The English court in *R v. Neville (Richard)* [2002] EWCA Crim 2522 remarked that a substantial sentence was imposed as required in the public interest to mark the seriousness of the continuing conduct of the appellant and to deter him from persisting with it.

[27] Edmund Davies LJ in *R v. de Haan* [1967] 3 All ER 618 at 619, aptly said:

> It is undoubtedly right that a confession of guilt should tell in favour of an accused person, for that is clearly in the public interest.

[28] Sentencing judges, after applying the public interest element, must ensure that the sentences passed are not disproportionate to the severity of the offence committed.

[29] It seems to me that the purpose of the public interest element is to mould sentencing policy more towards deterrence than anything else. Indeed Raja Azlan Shah CJ (Malaya) (as His Majesty then was) speaking for the Federal Court in *Loh Hock Seng & Anor v. PP* [1979] 1 LNS 48; [1980] 2 MLJ 13, succinctly said at p. 14 of the report:

> We are of the view that in the circumstances of the second appellant's case, the imposition of a term of imprisonment for life is wholly inadequate as it does not reflect the gravity of the offence and the circumstances of the case against him, his record of previous convictions, the public interest involved in respect of crimes of this nature and a sufficient factor of deterrence to others of his ilk.

[30] The public interest element is a bare shell. It is shaped and coloured by the facts of the case, by the surrounding circumstances that compelled the court to take into account before sentencing and, more importantly, by the mores of a particular society.

[31] And the mores of a particular society was referred to by the trial judge in *R v. Williams* [1974] Crim LR 558. That was a case where both the accused pleaded guilty to offences of attempting to bugger a sheep and aiding and abetting another to do so. The offences were committed about midnight after both the accused had been drinking heavily. They were seen by a man who was taking his dog for a walk. Both the accused lived in a small community. This was what the trial judge said:

> I fully appreciate that it is going to be a matter of comment about you for years to come and I think the kindest thing I can do is to visit upon you the outrage which I think anybody with decent feelings would feel about it so that nobody can say, in your village, that you haven't paid for it.

[32] This very passage equally applies to Sinnathurai. The society from which he comes from must feel outraged by his conduct of torching the motor car and burning the two victims who were inside the motor car alive. It is an unforgiveable conduct.

[33] Sinnathurai deserves the 24 years imprisonment for a heinous crime. The sentence imposed reflects the revulsion of the public at what he did. There are no redeeming features in his favour. And he has been given his just deserts.

[34] Anyone reading the facts of this case would be overcome with horror, indignation and disgust. Crime of this nature will not be tolerated in this country. Stern punishment must be meted out and the learned High Court judge did just that. In my judgment, the sentence meted out is commensurate and appropriate to the gravity of the crime. And the sentence too had achieved its desired effect.

[35] The sentences imposed by the sentencing judges have a signalling effect. If the judge imposes a light custodial sentence, he is sending a message to the whole world at large, so to speak, that the offence is not that serious. And if the judge imposes a binding over under the Criminal Procedure Code, he is saying that the accused should not be charged in the first place at all. So, it can be deduced that when a judge imposes a sentence he is making a statement whether the offence is serious or trivial. It is in these contexts that sentencing judges must be very cautious and must weigh in a balance the gravity of the offence with the proposed sentence. The sentence imposed must always reflect public interest after taking into account the mitigation advanced by the accused. On mitigation, Abdoolcader J (later SCJ) made these erudite remarks in *PP v. Teh Ah Cheng* [1976] 1 LNS 116; [1976] 2 MLJ 186, at p. 187:

> The respondent also puts forward in his plea in mitigation the fact that he is employed and supports an aged mother and step-brothers. He should of course have thought of this before committing the offences and not after; he is in fact pleading hardship arising from the consequences of his own acts and I would reiterate what I had occasion previously to observe in another case that an offender should not expect to excite or harness any sympathy on an ipse dixit by taking the stance of the impetuous youth who killed his parents with an axe and then pleaded in mitigation that he was an orphan.

[36] But, the type of offence committed by Sinnathurai cannot attract leniency. The offence is so gross and barbaric. A severe sentence is called for. This is an apt case for crime control and public protection. Deterrence is the answer. The right message must be sent to all prospective offenders. It is just unthinkable to give a light sentence. A severe sentence is called for.

[37] No criminal is deterred by a slap on the wrist type of sentence or the wink of an eye type of sentence. The criminal will continue to commit the same crime, over and over again. Lawlessness will then prevail. It is crucial to impose deterrent sentences for serious offences in order to maintain law and order.

[38] I agree that the sentence of 24 years imprisonment is in order for this kind of offence. Under the circumstances, the sentence imposed by the learned High Court judge is not manifestly excessive. I agree that the factual matrix do not merit a discount to be given to the appellant.

[39] Accordingly, the appeal should be dismissed. The sentence imposed by the learned High Court judge is hereby affirmed.

.